

DMLR Responses to Comments/ Objections

Renewal of Permit No. 1101905, Application Number 1005536, A & G Coal Corporation, Inc.

An Informal conference was held on April 21, 2009, at DMME's Big Stone Gap office to receive public comments on Permit Application No. 1005536, A & G Coal Corporation. The following is a summary of the concerns/objections expressed and the Division of Mined Land Reclamation (DMLR) responses.

Informal Conference location/process

The public notice of this hearing should be placed in a paper of the greatest circulation in the area of the mining proposed.

DMLR Response

The publication for the informal hearing was placed in the Coalfield Progress on April 3, 2009 two weeks before the scheduled conference. The Coalfield Progress is a newspaper in general circulation in the locality of A & G Coal Corporation permit number 1101905. The Division finds that the requirements of 4VAC25-130-773.13 (a) (1) have been met.

The hearings should be conducted in the communities where the mining occurred.

DMLR Response

The informal conference was conducted at the Division of Mined Land Reclamation's Big Stone Gap Office at the request of Mr. Larry Bush. Mr. Bush did not request that the conference be held in the community. The Division office is in the locality of A & G Coal Corporation permit number 1101905. The Division finds that the requirements of 4VAC25-130-773.13 (c) (1) have been met.

General Review

This hearing for the expansion of the permit to 1200 acres (I think) should not be permitted.

DMLR Response

The renewal application does not propose to add 1200 acres or any area for that matter.

Monies from the stimulus should be used to provide sewer in the coals camps.

DMLR Response

Designation of the use of the Stimulus money is beyond the authority of this agency.

Mining in these areas will damage our mountains and forests and hamper any future economic development such as tourism.

DMLR Response

Surface mining operations are a legal activity under Virginia law. DMME can not legally deny a renewal application because the mining will disturb the mountains and forests.

Mining seems to be getting more and more out of control. Despite the rules and regulations, no permit has ever been denied.

DMLR Response

The statement that "Mining seems to be getting more and more out of control. Despite the rules and regulations, no permit has ever been denied" is vague with no supporting documentation. Permits have indeed been denied in the past. In addition applications are withdrawn based upon DMLR review comments.

Sediment Structures

The company has built an impoundment that has failed before.

DMLR Response

DMLR investigated a report by a citizen that a pond had failed. On permit # 1102028. The DMLR Inspector investigated the allegation and in a memo dated April 15, 2009 stated that he "went to the pond and found it to be in good condition and I did not see any place on the pond that had been broken and fixed."

A study on an impoundment in the area showed that failure by the impoundment would destroy several houses in the area.

DMLR Response

DMLR is not aware of any such study on any sediment pond in the area. All ponds on this renewal are classified as low hazard.

Hydrologic Impact

The existing site that's there now, has already contributed to heavy siltation flow into Pigeon Creek, Looney Creek, and Lick Creek. Now this increase in acreage that is being proposed here is only going to increase that runoff.

DMLR Response

The renewal application does not propose to add 1200 acres or any area for that matter.

I request denial of the renewal of this permit because of the expansion of this that's already caused all kinds of damage to the waterways, forests, wildlife, and mainly the water.

DMLR Response

The renewal application does not propose to add 1200 acres or any area for that matter.

Logging operation cleared an abandoned road in the area and created a stream crossing that blocked a tributary to Pigeon Creek.

DMLR Response

Logging operations are regulated by the Virginia Department of Forestry. Logging is independent of mining and can and will take place absent a mining operation. DMLR has no authority to prohibit logging. When situations arise within permitted mine boundaries regarding logging it is still essential for the VDOF to be notified of any possible water quality violations.

DMLR's approval of the placement of any drainage structures in the watershed allows more sediment into the streams killing the aquatic life.

DMLR Response

The applicant has shown with the inclusion of the site-specific sediment and drainage control plans included in the permit that the proposed activities will not cause or contribute to the violation of any applicable State or Federal water quality standards or other environmental resources of the stream.

Also, the mitigation plan approved by the Army Corps of Engineers and required by DMLR, includes the construction of permanent stream channel using natural stream channel design. These designs, including the restoration of 41,974 linear feet of stream and 15.7 acres of wetlands, will ensure no net loss of environmental resources and provide improved habitat for the aquatic life in the stream.

I want this application to be denied. If it cannot be denied then do a complete environmental assessment before it is approved.

DMLR Response

The permittee has a legal right of renewal under 4VAC25-130-773.19.(d) Right of renewal which reads: "Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with Paragraph (a) of this section shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with 4VAC25-130-774.15." An environmental assessment is neither applicable nor required for this application. The National Environmental Protection Act applies to federal undertakings and pursuant to the 2003 United States Court of Appeals decision in NMA v. Fowler a state SMCRA permitting action is not a federal undertaking. SMCRA permits must contain a probable Hydrologic Consequence determination and the regulatory authority must prepare a Cumulative Hydrologic Impact Assessment. This was done in the original application and if applicable in subsequent revisions and mid term reviews. These remain in effect with this renewal application.

From a scientific point of view, I think, as others have stated, it's absolutely imperative that you all conduct an environmental impact statement. There is a mandate that's already been mentioned, you're well aware of it. It's in the law.

DMLR Response

See the response above. The commenter is mistaken in the assertion that it is mandated. There is no mandate in the law for an Environmental Impact Statement (EIS).

My main concern, like I said, is the water. Our kids, and their kids deserve clean water and streams to play in just like I did when I was growing up And mountains to hunt, and hike or whatever they want to do in them. And you're allowing it to be destroyed daily with these permits that you just throw out there.

DMLR Response

The permittee has a legal right of renewal under 4VAC25-130-773.19.(d). All ponds and fills have been previously approved for this renewal application.

It's time for you (DMLR) to do impact studies and see what's happening to these people.

DMLR Response

See the previous response regarding impact studies. There is no mandate in the law for an EIS.

Run off waste, off-set waste goes into the streams. You have a regulation on the Total Maximum Daily Load that goes into a stream. And, you take for instance, you

got two or three permits that go into this stream, and they have been as high as 14 going into one stream, and they've all got the same amount. Nothing ever increases, so the Total Maximum Daily Load for one day could be 10 and yet on 10 more permits it'd still be the same.

DMLR Response

This comment is unclear. However, since this is a renewal no new ponds or NPDES discharge points are proposed. All ponds are already approved. No TMDL review is required on renewals.. When an application proposes to add a new discharge point into a TMDL watershed then a TMDL review is conducted that determines what additional wasteload is proposed and if the stream waste load allocation allows the additional discharge point. The discharge points on this permit are included in any TMDL review for a new application proposing to add a discharge point. A & G Coal Corporation CSMO/NPDES permit 1101905/0081905 is not located within a currently listed TMDL watershed.

Air Quality (Dust)

I don't know if the Department of Minerals Mines and Minerals has offered to take air quality tests in communities that's been affected by this. And, like for instance, when you go into these mountains and do all this destruction and build all these dams, and put up all this stuff, you're never in consideration of how many people lives downstream from this pond, so the environmental impact study that you take would really get off of the resource actual extraction of the resource and get on the destructive side of what's happening to human beings.

DMLR Response

See the previous response regarding impact studies. There is no mandate in the law for an EIS. DMME/DMLR does not conduct air quality testing. Air quality issues are under the jurisdiction of the Department of Environmental Quality (DEQ). DMLR understands that DEQ intends to conduct air quality studies in the communities however that will have no bearing on the decision to issue or deny this application. DMLR will coordinate with DEQ on this issue and if DEQ determines that protective/preventive dust control measures need to be incorporated in the DMLR permit then appropriate permit revisions will be required.

I've got three grandkids and I don't want them growing up in filth. I don't want them breathing dirty air. Dust covers, the dust covers my house. It covers my car.

DMLR Response

See the previous response regarding air quality studies.

I don't know if that's coming where they run into old mine entries or whatever, but it's a dark brown something that's coming out of those entries are coming from somewhere. And I've asked repeatedly and I want to reiterate that today, I've asked repeatedly, because inspector notes from this Ison Rock thing, uh, it says that there's poisons, toxins and that shouldn't be buried no less than four feet, and none on the bottom of the, wherever they shove the spoil into.

DMLR Response

The commenter has mischaracterized the permit language. Each permit is required to contain a toxic materials handling plan. This does not refer to toxins or poisons but rather to potentially acid producing strata. "Toxic-forming materials" means earth materials, or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water. Each application for a permit must include an acid base accounting of the different rock strata that will be encountered. If the potential acidity exceeds the potential alkalinity then the applicant must explain how this is to be handled. It may be encapsulated, covered with a minimum of four feet of suitable cover or it may be blended with material that has excess alkalinity to neutralize the potential acidity. This is meant to prevent acid mine drainage or iron discharges. This is in accordance with 4VAC25-130-816.41(f).

I am concerned that if we should have to extract water from the Powell River in a time of drought, the water we extract will not be endanger our health because of the runoff from mining.

DMLR Response

There is no evidence that the water quality of the Powell River at the Big Stone Gap withdrawal point is being adversely affected by this mining operation